

Docket No. 212/340

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

Baek

Art Unit: 3728

Serial No.: 09/996,398

Filed: November 28, 2001

For: Boot Liner with Gel Pads

Examiner: Stashick, A.

DECLARATION UNDER 37 CFR 1.132

I, Jeffrey McCall, hereby declare:

1. I am currently employed as Vice President of Footwear at DC Shoes, Inc. I have been employed in this capacity since 2001.

2. I am generally aware of the business conducted by DC Shoes, Inc. and I am aware of the number and kinds of shoes and boots sold by DC Shoes, Inc. I am generally aware of the worldwide shoe and boot market.

3. In 2003 DC Shoes, Inc. began selling branded snow boots having a gel pad placed between layers of material in the toe box and in the heel counter area of the boots, as claimed in this patent application. These boots are marketed under the names Tactic, Quest, Stealth, Terrain, Rogue, Phantom 3 and Solaris. Together, these models of branded snow boots are referred to as gel snow boots.

4. The average wholesale price of gel snow boots is \$90.00. The wholesale retail price of other boot models sold by DC Shoes, Inc. is \$80.00.

212/340

5. The significant difference between gel snow boots and prior branded snow boots introduced by DC Shoes, Inc. is the addition of the gel pads as claimed in this application.
6. Expected sales of gel snow boots in 2003 were 17,000 pairs of gel snow boots.
7. In 2003 DC Shoes, Inc. sold 32,700 pairs of gel snow boots.
8. In 2003 DC Shoes, Inc. sold an overall total of 57,500 pairs of all kinds of branded snow boots.
9. In 2002 DC Shoes, Inc. sold an overall total of 47,000 pairs of all kinds of branded snow boots.
10. In 2003 sales of gel snow boots constituted about 57% of overall sales of branded snow boots by DC Shoes, Inc. and about 6.5% of the total worldwide branded snow boot market.
11. In 2003 DC Shoes, Inc. claimed 10% of the total worldwide branded snow boot market with all models of branded snow boots.
12. In 2002 DC Shoes, Inc. claimed 5.8% of the total worldwide branded snow boot market with all models of branded snow boots.
13. Of all branded snow boots sold in the world, the average market share of a type of branded boot was about 2% in 2003.
14. DC Shoes, Inc. has introduced 50 models of boots into the market in the last 6 years. Of those models, gel snow boots rank number one in terms of the number of pairs of boots sold in the first year, claiming 2% more market share in the first year as compared to the next most successful boot model introduced by DC Shoes, Inc.

212/340

15. DC shoes, Inc. marketed the gel snow boot models to about the same degree as all other new boot models introduced by DC shoes, Inc.

16. DC Shoes, Inc. did not expect the level of success enjoyed by the gel snow boots, as reflected by the expected 2003 sales figures in comparison to the actual 2003 sales figures.

17. I have received anecdotes from DC Shoes, Inc. regional sales representatives that retail shoe vendors attribute the success of gel snow boots to the gel pads placed within the boots as claimed.

18. I have received anecdotes from professional snow boot testers that gel snow boots are more comfortable during use than other models of branded snow boots due to the gel pads placed within the boots as claimed.

19. The gel pads, placed in the gel snow boots as claimed, make the boots more comfortable and provide better protection for the wearer's foot during use as compared to other branded snow boot models.

20. Based on the above facts and based on my knowledge of the footwear market, I attribute the commercial success of gel snow boots to the gel pads placed in the toe box and heel counter areas as claimed in this application.

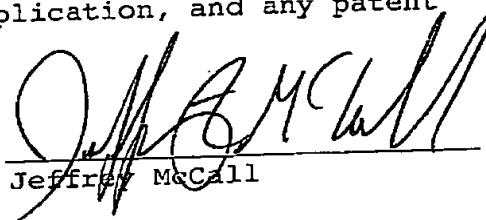
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the

212/340

United States Code, and that such willful false statements may jeopardize the validity of the application, and any patent issuing thereon.

Date: March 23, 2004

By:

  
Jeffrey McCall